

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

RONALD SIMMONS,

Petitioner,

vs.

JAMES E. TILTON, Warden,

Respondent.

CASE NO. 06CV2373 JLS (PCL)

**ORDER (1) ADOPTING REPORT  
AND RECOMMENDATION and (2)  
DISMISSING PETITION FOR  
WRIT OF HABEAS CORPUS  
WITH PREJUDICE**

(Doc. Nos. 20, 29)

On January 15, 2008, the Hon. Peter C. Lewis issued a Report & Recommendation (“R&R”), recommending that the Court grant James E. Tilton’s (“respondent”) motion to dismiss the petition for writ of habeas corpus filed by Ronald Simmons (“petitioner”). (See Doc. Nos. 20 (motion) & 29 (R&R).) Magistrate Judge Lewis found that petitioner was challenging the same state court conviction and alleging the same grounds for relief as presented in a prior petition that the Central District of California had dismissed with prejudice. (Doc. No. 29, at 2.) Petitioner had not obtained leave from the Ninth Circuit to file a successive petition. See 28 U.S.C. § 2244(b)(3)(A). Therefore, Magistrate Judge Lewis recommended granting the motion to dismiss “without prejudice to [petitioner] filing a petition in this court if he obtains the necessary order from the Ninth Circuit Court of Appeals.”

This Court granted petitioner’s request for an extension of time to object to the R&R. (Doc. No. 32.) The May 2, 2008 deadline passed without petitioner’s filing of objections. On July 9, 2008, before the Court had issued a decision on the R&R, petitioner filed a Notice of Appeal of Magistrate

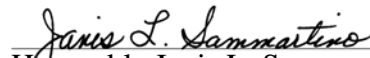
1 Judge Lewis's R&R with the Ninth Circuit. (Doc. No. 33.) On August 4, 2008, finding that the R&R  
2 did not satisfy the "final decision" requirement of 28 U.S.C. § 1291, this Court denied petitioner's  
3 motion for a certificate of appealability and leave to proceed on appeal in forma pauperis. (Doc. No.  
4 36.) During the pendency of the appeal, the Court rejected for lack of jurisdiction various motions  
5 that petitioner attempted to file. (See Doc. Nos. 38-40.)

6 On February 23, 2009, the Ninth Circuit issued an Order on petitioner's appeal. The court  
7 construed the appeal as an application for authorization to file a successive § 2254 habeas petition in  
8 the district court and denied the application. (Doc. No. 41.) The court further ruled, "No petition for  
9 rehearing or motion for reconsideration shall be filed or entertained in this case." (Id.)

10 After reviewing the R&R and the Order from the Ninth Circuit on petitioner's appeal, the  
11 Court **ADOPTS** the R&R and **GRANTS** respondent's motion to dismiss. Because the Ninth Circuit  
12 has denied petitioner's application to file a successive petition in this Court and will not entertain a  
13 motion to reconsider its decision, the Court **DISMISSES WITH PREJUDICE**. The Clerk **SHALL**  
14 **CLOSE** the file.

15 IT IS SO ORDERED.

16 DATED: March 30, 2009

17   
18 Honorable Janis L. Sammartino  
19 United States District Judge  
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